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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

NO. ~~3709~~ 70-5009

THEON JACKSON,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

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No. 5703

THEON JACKSON,

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STATE OF INDIANA,

Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner, Theon Jackson, by his undersigned attorneys, having heretofore dule filed his Petition For Writ of Certiorari To The Supreme Court Of Indiana, now herein respectfully submits his Supplemental Brief concerning the following matters:

DIFFERENCES IN COMMITMENT PROCEDURES AND PROVISIONS FOR RELEASE

The comparison herein is between the

commitment of an insane person charged with a crime, and a feebleminded person needing care and treatment.

As to the former, the pertinent statute is the Acts of the General Assembly of Indiana, 1951, Ch. 238, Sec. 2, as amended, and as found in Burns Ind. Stat. Ann., 1956 Repl., (1969 Supp.), Sec. 9-1706a:

> "When at any time before the trial of any criminal cause ***the court, either from his own knowledge or upon the suggestion of any person, has reasonable ground for believing the defendant to be insane, he shall immediately fix a time for a hearing to determine the question of the defendant's sanity and shall appoint two (2) competent disinterested physicians who shall examine the defendant upon the question of his sanity and testify concerning the same at the hearing. At the hearing other evidence may be introduced to prove the defendant's sanity or insanity. If the Court shall find that the defendant has comprehension sufficient to understand the nature of the criminal action against him and the proceedings thereon and to make his defense, the trial shall not be delayed or continued on the ground of the alleged insanity of the defendant. If the court shall find that the defendant has not comprehension sufficient to understand the proceedings and make his defense, the trial shall be delayed or continued on the ground of the alleged insanity of the defendant. If the court shall find the defendant has not comprehension sufficient to understand the proceedings and make his defense, the

court shall order the defendant committed to the department of mental health, to be confined by the department in an appropriate psychiatric institution. Whenever the defendant shall beome sane the superintendent of the sate psychiatric hospital shall certify the fact to the proper court, who shall enter the order on his record directing the sheriff to return the defendant, or the court may enter such order in the first instance whenever he shall be sufficiently advised of the defendant's restoration to sanity. Upon the return to court of any defendant so committed he or she shall then be placed upon trial for the criminal offense the same as if no delay or postponement had occurred by reason of defendant's insanity."

The applicable statute for the commitment of feebleminded persons is as follows:

> Acts of the General Assembly of Indiana, 1939, Ch. 119, Sec. 3, as found in Burns Ind. Stat. Ann., 1964 Repl., Sec. 22-1907

"A reputable citizen of the county from which an application is to be made shall make an application *** under oath, setting forth information substantially as follows: The age, sex, race, general mental and physical condition, residence and legal settlement of the applicant, whether such applicant is under the charge of a guardian or parents and where known, the cause and duration of the feeble-minded condition and such other facts regarding the applicant's personal and family history as the trustees(commissioner of mental health) may require; which facts shall be submitted to the judge of the circuit court having jurisdiction over that county, together with a certificate of a reput-

able physician that the applicant is admissible under the rules of the board of trustees (commissioner of mental health), that he or she is feeble-minded and is not insane or epileptic, and is free from any infectious or contagious disease and from vermin. When such statements have been filed, the said judge shall appoint two (2) medical examiners who shall be physicians of not less than three (3) years' experience in the general practice of medicine and surgery, and not related to the person for whom application is made by consanguinity or marriage. It shall be the duty of said examiners to carefully and separately examine said person for whom application is made and separately certify in writing to said judge whether said person is a feeble-minded person and is not insane or epileptic. In his discretion, the judge may call additional witnesses until fully satisfied of the conditions as to feeble-mindedness of the person under inquiry. *** If it shall appear to the judge that the person is feeble-minded, he shall enter an order of commitment in the proper record, at the same time directing the clerk of the circuit court to forthwith apply to the superintendent of the institution for feeble-minded persons located in the district in which said county is situated, for the admission of said person to said institution, and to transmit with said application to said superintendent for his information, copies of all statements and certificates submitted, certified under the seal of the court.***"

From the above statutes the following differences are noted:

METHOD OF ACQUIRING JURISDICTION:

The Court having jurisdiction of the criminal charge against the defendant has jurisdiction to commit him for insanity prior to trial. The Court in which the application is filed, in a civil proceeding, in the county of residence of the feeble-minded person, has jurisdiction to commit the feeble-minded person.

EXAMINATION BY PHYSICIANS

There is a prior examination of the feeble-minded person before application is made and before the Court acquires jurisdiction, and that physician certifies in the first instance that the applicant is feeble-minded and that he is not insane. In both instances the Court having jurisdiction appoints two physicians to made examinations, but in the case of the feeble-minded person, they again must certify as to whether he is feeble-minded and not insane. It is noted that the statute, Burns 22-1907, supra, provides the certificate of the first physician that the applicant is not insane as a condition precedent to the proceedings.

ULTIMATE ISSUE DETERMINED BY COURT

In the case of the person charged with crime, the ultimate issue to be determined by the Court, as a condition precedent to commitment, is that the defendant has not comprehension sufficient to understand the proceedings and make his defense, but such finding is made upon evidence submitted to prove the defendant's insanity. In the case of the civil proceeding, the ultimate issue to be determined by the Court is that the applicant (the subject of the application, rather than the reputable citizen filing the application) is feeble-minded, after certification by physicians that the applicant is not insane.

COMMITMENT

In the criminal proceeding, the defendant is committed to Department of Mental Health, to be confined in an appropriate phychiatric institution. In the civil proceeding, the applicant is admitted to either the Muscatatuck State School or the the Fort Wayne State

School depending upon his place of residence in the State of Indiana, and whether there is room for him in one and not the other.

Acts of 1939, Ch. 119, Sec. 3, as found in Burns, (1964 Repl.), Sec. 22-1907, supra,

Acts of 1931, Ch. 38, Sec. 1, as amended, and as found in Burns, (1964 Repl.), Sec. 22-1901

RELEASE

As noted above, p. 3, the person charged with crime and committed to the Department of Mental Health by the Court having jurisdiction of the criminal proceedings, cannot be released until:

A. He becomes sane,

B. The Superintendent of the state psychiatric hospital certifies to the Court that he has become sane; or the Court has otherwise been "sufficiently advised of the defendant's restoration to sanity."

C. The Court, in either instance, orders the sheriff to return the defendant to court.

However, the feeble-minded person

may receive a furlough or discharge according to the rules and regulations of the Commissioner of Mental Health, subject to the requirement that no person shall be discharged from the Muscatatuck State School of the Fort Wayne State School until, in the judgment of the Superintendent, the "mental and physical condition of the patient justifies it."

Acts of the General Assembly of Indiana, 1931, Ch. 58, Sec. 1, as amended, and as found in Burns, (1964 Repl.), Sec. 22-1901

"The name of the Indiana School for Feeble-Minded Youth is hereby changed to the Fort Wayne State School; and the name of the Muscatatuck Colony, formerly the Indiana Farm Colony for Feeble-Minded is hereby changed to the Muscatatuck State School, which name shall apply to all statutes where the name of Muscatatuck Colony is now used."

Acts of 1939, Ch. 119, Sec. 4, as found in Burns, (1946 Repl.), Sec. 22-1908

"The respective board of trustees (commissioner of mental health) of each of said institutions is empowered to make such rules and regulations respecting the care, custody ***of patients, and the management of such institution and its affairs, as it may deem best for the interest of the patients and the state. *** All persons admitted to such institution shall, until properly dis-

charged from the same, be under the custody and control of the superintendent thereof, and such superintendent, subject to such regulations as the trustees (commissioner) see fit to adopt, may restrain and discipline any patient in such manner as he may judge is demanded for the welfare of the patient and the proper conduct of the institution. Furloughs and discharges may be given to the patients as provided by such regulations."

Acts of 1919, Ch. 94, Sec. 18, as found in Burns, (1964 Repl.), Sec. 22-1814

"Any person may be discharged from the colony at any time by the board of trustees (commissioner of mental health), provided only that no person shall be discharged from the said colony until, in the judgment of the superintendent, the mental and physical condition of the patient justifies it."

When the feeble-minded person is discharged, upon the determination of the Superintendent that his mental and physical condition justifies his discharge, there are no requirements whatsoever that he report to the court or any other place, and no requirements whatsoever that a judicial determination be made upon his condition, nor judicial approval of the Superintendent's determination. There is likewise no require-

ment that his condition as to being feeble-minded has changed. In fact, whenever an application for re-admission to the School is made, a new certificate is filed with the court by a physician that the feeble-minded person is still feeble-minded and not insane (among other things), and this certificate is then copied and certified by the Clerk of the Court to the proper school for the feeble-minded and serves as an application for readmission, without any further or new judicial determination being made.

Acts of 1947, Ch. 93, Sec. 1, as found in Burns, (1964 Repl.), Sec. 22-1910.

The person charged with crime and released from the psychiatric institution is not released from custody at all, but merely returned to the Court for trial and disposition of the criminal charge.

Acts of 1951, Ch. 238, Sec. 2, Burns Sec. 9-1706a, supra, p. 3,4

STATE FACILITIES TO WHICH ASSIGNED

The person charged with crime, commited

from Marion County under the insanity statute, supra, is as a matter of practice either assigned to the Dr. Norman M. Beatty Memmorial Hospital (formerly called the Northern Indiana Hospital), Div. For Maximum Security, or Central State Hosiptal (formerly the Central Indiana Hospital for Insane) in Indianapolis, Indiana. These, together with Richmond State Hospital, Logansport State Hospital, Evansville State Hospital, and Madison State Hospital are the Psyciatric Hospitals as listed in Burns, (1964 Repl.), Chapter 10, Sections 22-1001 to 22-1036.

Acts of 1881 (Spec. Sess.), ch. 67, Sec. 24, as found in Burns (1964 Repl. Sec. 22-1001

Acts of 1927, Ch. 47, Sec. 1, as found in Burns (1964 Repl.), Sec. 22-1002

Acts of 1927, Ch. 47, Sec. 2, as found in Burns (1964 Repl.), Sec. 22-1003

Acts of 1945, Ch. 358, Sec. 1, as found in Burns (1964 Repl.), Sec. 22-1004

However it is to be noted that for the first time, the Supreme Court of Indiana has held in its opinion in this case that psychiatric hospitals include the Muscatatuck State Hospital. Appendix A, p. 6a, Petition For Writ

of Certiorari To The Supreme Court Of Indiana.

The last information available to the undersigned pauper counsel for the Petitioner was that the Petitioner was assigned to and is still confined in Central State Hospital. Counsel are not aware that any persons committed under the insanity provisions of Burns Sec. 9-1706a, supra, p. 2 have ever been assigned to either of the two institutions for the care and treatment of feeble-minded persons on civil commitment.

EFFECT OF CRIMINAL CHARGES

Counsel for Petitioner are unaware of any authority to the effect that the pending criminal charges against Petitioner would have been a bar against his being committed under Burns Sec. 22-1907, supra; and if he had been on bond when he was committed under civil commitment to Muscatatuck (if such commitment had taken place), his being held in the custody of the State of Indiana would have been recognized as a legal excuse for the prevention of forfeiture of his bond.

Acts of 1961, Ch. 263, Sec. 10, as amended by Acts of 1963, Ch. 275, Sec. 2; prior to amendment by the Acts of 1969, Ch. 241, Sec. 5, which occured subsequent to the judgment in this case)

DISPOSITION OF CRIMINAL CHARGES

If the Petitioner had not been committed as an insane person under Burns Sec. 9-1706a, supra, and had been committed as a feebleminded person under Burns Sec. 22-1907, it would reasonably be expected that the Prosecuting Attorney for the 19th Judicial District (Marion County) would have dismissed the charges, as a practical matter, although counsel for the Petitioner are unaware of any statutory requirement that he do so. It is a frequent practice to dismiss criminal charges against a man who has been committed to a prison sentence on Federal charges while his case is pending in State court. Since he was committed as an insane person under Burns Sec. 9-1706a, supra, the charges will remain against him until he recovers his sanity -- which means until he dies. There is no statutory bar to a dismissal of the charges

while a person is being confined in a psychiatric hospital under the provisions of Burns Sec. 9-1706a, supra, but that statute certainly contemplates a trial when sanity is restored, and no dismissals have previously taken place. Counsel respectfully submit that a reversal of this cause by this Court as prayed herein will certainly give ample justification for the dismissal of the absurd criminal charges against a person with the mental age of a three (3) or four (4) year old child -- a deaf mute child-- which action the trial court should have recommended to the Prosecuting Attorney when that evidence was received at the hearing.

It is again submitted that a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Indiana, and that the same should be held to be in violation of the Eighth and the Fourteenth Amendments of the Constitution of the United States.

Respectfully submitted,

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